

02-01-08

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## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent No.:	7,076,920	Examiner:	Gregory J. Strimbu
Issue Date:	July 18, 2006	Group Art Unit:	3634
Application No.:	09/815,376	Docket No.	16458-050 (MKSI.50USU1)
Filed:	March 21, 2001		
For:	COMBINATION DIFFERENTIAL AND ABSOLUTE PRESSURE TRANSDUCER FOR LOAD LOCK CONTROL		

Attn: Certificate of Corrections Branch  
Commissioner for Patents  
P. O. Box 1450  
Alexandria, VA 22313-1450

**REQUEST FOR CERTIFICATE OF CORRECTION**

Sir:

Enclosed is a Certificate of Correction along with a copy of the Decision on Petition Under 37 CFR 1.78(a)(6), issued for this patent on December 10, 2007. Please note that the last sentence in the attached Decision says, "This application is being referred to the Certificates of Correction Branch for processing the request for a certificate of correction in accordance with 37 C.F.R. 1.323." Therefore, the enclosed Certificate of Correction is submitted to facilitate that processing. Also, please note that the Decision says that the \$100 certificate of correction fee will be charged to petitioner's deposit Account No. 50-1491.

To avoid any confusion, please note that the applicant's Petition had an alternative request, and the Certificate of Correction form that was submitted with the Petition was for the alternative request that was dismissed, thus is not the appropriate Certificate of Correction that should now be issued. Specifically, the subject matter of the applicant's Petition Under 37 C.F.R. 1.183 and 37 C.F.R. 1.78(a)(6) was regarding correcting the specification to include a reference in the application for priority to the provisional application based on 35 U.S.C. §119(e). However, for the possible event that petition under 37 C.F.R. 1.183 and 37 C.F.R.

Request For Certificate Of Correction

1.78(a)(6) was not granted, it included an alternative petition under 37 C.F.R. 1.78(a)(3) for priority as a continuation-in-part application under 35 U.S.C. §120, instead of 35 U.S.C. §119(e), and a proposed Certificate of Correction was enclosed with the Petition for use in the event the alternate Petition was granted, i.e., as a continuation-in-part of the provisional patent application. Therefore, the Certificate of Correction to recite the continuation-in-part that was submitted with the Petition was only appropriate for the alternate petition grounds, which is not what was granted.

In its decision, the Office of Petitions found that the applicant's claim for priority to the provisional application under 35 U.S.C. §119(e) was noted by the Office by its inclusion on the Filing Receipt, so neither the applicant's petition under 37 C.F.R. 1.183 and 37 C.F.R. 1.78(a)(6) nor the alternate under 37 C.F.R. 1.78(a)(3) was necessary, and they were dismissed. Consequently, the Office of Petitions interpreted applicant's petitions as a Request for Certificate of Correction, and the Request for Certificate of Correction was granted, but there was not actual appropriate Certificate of Correction for the priority recitation that was allowed in the petition documents, i.e., one that recites, "The present application claims priority to U.S. Provisional Application No. 60/191,223, filed March 22, 2000."

Consequently, in accordance with the decision by the Office of Petitions that a petition for acceptance of an unintentionally delayed claim for benefit of priority to the provisional application under 35 U.S.C. §119(e) is not necessary and can be done by Certificate of Correction, the enclosed Certificate of Correction is submitted herewith for that purpose.

If there are any questions in this regard, please contact the applicant's attorney at the telephone number listed below.

Dated: January 30, 2008

Respectfully Submitted,  
COCHRAN FREUND & YOUNG LLC

By:

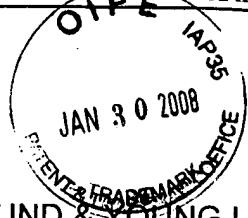
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OFFICE OF PETITIONS

In re Patent No. 7,076,920  
Issue Date: July 18, 2006  
Application No. 09/815,376  
Filed: March 21, 2001  
Attorney Docket No. 16458.050

DECISION ON PETITION  
UNDER 37 CFR 1.78(a)(6)

This is a decision on the petition under 37 CFR 1.183 to suspend 37 CFR 1.78(a)(6) or in the alternative under 37 CFR 1.78(a)(6), filed February 28, 2007, to accept an unintentionally delayed claim under 35 U.S.C. §119(e) for the benefit of priority to prior-filed provisional Application No. 60/191,223, filed March 22, 2000, by way of a certificate of correction filed concurrently herewith.

The petition under 37 CFR 1.183, and 37 CFR 1.78(a) is DISMISSED as involving moot issues

The petition under 37 CFR 1.78(a)(3) is also DISMISSED as involving moot issues. These petitions have been interpreted as a request for a certificate of correction under 37 CFR 1.323. The request for certificate of correction is GRANTED.

A petition under 37 CFR 1.78(a)(6) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after expiration of the period specified in 37 CFR 1.78(a)(5)(ii) and must be filed during the pendency of the nonprovisional application. In addition, the petition must be accompanied by:

- (1) the reference required by 35 U.S.C. § 119(e) and 37 CFR 1.78(a)(5)(i) to the prior-filed application, unless previously submitted;
- (2) the surcharge set forth in § 1.17(t); and
- (3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(5)(ii) and the date the claim was filed was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

Where a claim for priority under 37 CFR § 1.78(a)(6) is not included in the first sentence of the specification or in an ADS but does appear either in the oath or declaration or a transmittal letter filed with the application and the Office notes the claim for priority, no

petition will be required to accept a late claim for priority. This is because the application would have been scheduled for publication on the basis of the information concerning the claim submitted elsewhere in the application within the time period set forth in 37 CFR § 1.78(a)(5)(ii). On the other hand, if the USPTO does not note the claim for priority to the prior-filed applications set forth in the oath or declaration or transmittal letter submitted with the application, a petition will be required to accept a late claim for priority under 37 CFR § 1.78(a)(6).<sup>1</sup> In the present case, the Office noted the claim for priority to the prior-filed provisional application in the declaration filed with the application, as shown by their inclusion on the filing receipt.

As such, a petition for acceptance of an unintentionally delayed claim for the benefit of priority under 35 U.S.C. § 119(e) is not necessary. Petitioner should note that neither 37 CFR 1.78(a) or the Manual of Patent Examining Procedure (MPEP) create an affirmative duty on the part of the examiner. In particular, MPEP 201.11 (III)(E) states:

If the examiner is aware of the fact that an application is a continuing application of a prior application or the applicant fails to submit the reference to the prior application in compliance with 37 CFR 1.78(a) (e.g., the reference was submitted in the transmittal letter but not in the first sentence(s) of the specification or in an application data sheet), he or she should merely call attention to this in an Office action by using the wording of form paragraphs 2.15 or 2.16. (Underlining added)

The verb "should" is not a verb that requires a mandatory action nor does it create an affirmative duty on the part of the examiner. MPEP 201.11(III)(E) cannot be used as a basis for applicant to avoid 37 CFR 1.78(5)(iii) by not including the reference to the provisional application in the first line of the specification.

In view thereof, the \$400 fee for the petition under 37 CFR 1.183 has been credited back to deposit account no. 50-1491; however, the \$100 certificate of correction fee will be charged to petitioner's deposit Account No. 50-1491.

Any questions concerning this matter may be directed to Senior Petitions Attorney Patricia Faison-Ball at (571) 272-3212.

This application is being referred to the Certificates of Correction Branch for processing the request for a certificate of correction in accordance with 37 CFR 1.323.



Anthony Knight  
Supervisor  
Office of Petitions

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<sup>1</sup>Note MPEP 201.11 (III)(D) and 66 Federal Register 67087 at 67089 (Dec. 28, 2001), effective December 28, 2001.

**UNITED STATES PATENT AND TRADEMARK OFFICE**  
**CERTIFICATE OF CORRECTION**Page 1 of 1

PATENT NO. : 7,076,920

APPLICATION NO.: 09/815,376

ISSUE DATE : July 18, 2006

INVENTOR(S) : Garry Holcomb, Youfan Gu, James Stafford, James Mueller, Stacy Wade

It is certified that an error appears or errors appear in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page of the patent, please insert the following line:

--Related U.S. Application Data: Provisional application No. 60/191,223, filed on March 22, 2000.--

On page 1, line 1, insert the following paragraph:

-- Cross-Reference to Related Applications:

The present application claims priority to U.S. Provisional Application No. 60/191,223, filed March 22, 2000...--

MAILING ADDRESS OF SENDER (Please do not use customer number below):

This collection of information is required by 37 CFR 1.322, 1.323, and 1.324. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 1.0 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Attention Certificate of Corrections Branch, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

*If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.*